

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

AT&T MOBILITY LLC,

Plaintiff,

vs.

CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS,

Defendant.

Civil Action File  
No. 1:09-cv-03057-TCB

**SUPPLEMENTAL DECLARATION OF ANDY WILSON**

Pursuant to 28 U.S.C. § 1746, and in support of Plaintiff's Amended Motion for a Temporary Restraining Order, I, Andy Wilson, hereby declare as follows:

1. I am over 18 years of age, suffer from no legal disabilities, and am otherwise competent to make this supplemental declaration. The matters set forth herein are true of my own personal knowledge. If called to testify, I could and would competently testify as to the facts set forth herein.

2. I submit this supplemental declaration in support of AT&T's Amended Motion for a Temporary Restraining Order against Cellco Partnership d/b/a Verizon Wireless ("Verizon").

### **AT&T's Networks**

3. AT&T (with network partners) provides wireless service via three different but complementary networks: a “2.0G” GSM/GPRS network, a “2.5G” GSM/EDGE network, and a “3G” network. The three networks combine to provide wireless data service to approximately 303 million people where they live and work, or approximately 97% of people in the United States.

4. Approximately 301<sup>1</sup> million people, or 96.7% of the U.S. population, are covered by AT&T's “2.5G” GSM/EDGE network, on which consumers can do everything they can do on AT&T's “3G” network, including make calls, browse the Internet, including social networking sites, stream audio and video, or send electronic mail and text messages, albeit at slower speeds for some data applications.

5. AT&T's “3G” network covers approximately 233 million people where they live and work, or 75% of the U.S. population, and is concentrated in U.S. population centers.

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<sup>1</sup> This number is based upon the most up-to-date population data available, and is slightly different than my original declaration.

### **The New Advertisements<sup>2</sup>**

6. On approximately November 8, 2009, after AT&T filed this lawsuit, Verizon continued its false advertising campaign with three new television advertisements: “The Island of Misfit Toys,” “Naughty or Nice,” and “Christmas Blues.” (attached on DVDs as Exhibits F, G, and H to this declaration).

#### **“Island of Misfit Toys”**

7. The “Island of Misfit Toys” television advertisement is a parody of the “Rudolph the Red Nose Reindeer” television special that depicts an island to which Rudolph travels after escaping an attack from the Abominable Snow Monster.

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<sup>2</sup> In my first declaration, I referred only to the “Bench” television advertisement. During the same time period, Verizon was also running a “College” television advertisement (attached on a DVD as Exhibit E). In that advertisement, the announcer started by promoting why customers can do various things on Verizon’s network at “3G” speed and referencing Verizon’s “3G” coverage map. The announcer’s voice then changed, and he said “and if you want to know why some people have spotty ‘3G’ coverage, there’s a map for that.” The blue coverage map of AT&T then appeared on the screen showing large swaths of “white” or “blank” space. The character in the commercial, who is walking through a college campus, tries to use his wireless device but shakes his head expressing disappointment. The advertisement then displayed both AT&T’s and Verizon’s coverage maps and claimed that Verizon has “5 times more ‘3G’ coverage than the nation’s #2 wireless company.”

8. The advertisement begins with outdated, discarded toys expressing surprise at the arrival of an Apple iPhone. The red Charlie-in-the-Box says “Hey! Check out the new guy!”

9. The spotted elephant, in a surprised manner, asks the iPhone “What are you doing here? You can download apps and browse the web!” and a Dolly for Sue asserts that “Yeah. People will love you [the iPhone].”

10. In response, a blue AT&T coverage map depicting large swaths of “white” or “blank” space across the United States appears above the iPhone. All the toys exclaim “Oh . . .” in dismay, while the iPhone wilts and its screen turns dark. The toy airplane then assures the iPhone that “you’re going to fit right in here!”

11. AT&T’s and Verizon’s coverage maps then appear and the announcer states, “with five times more ‘3G’ coverage than AT&T, Verizon Wireless is your destination for great gifts.”

### **“Naughty or Nice”**

12. The “Naughty or Nice” television advertisement depicts a busy workshop of elves packing various electronic devices into red presents on a conveyor belt.

13. A red Verizon coverage map floats above the red presents. As an elf with a checklist calls out names, another elf retrieves a device, looks up at the coverage map, and approvingly states “Nice.” The device is then placed in the package.

14. After a third name is called, the elf retrieves an electronic device that looks similar to an iPhone and a blue AT&T coverage map appears above it. As in Verizon’s previous advertisements, the AT&T coverage map depicts large swaths of “white” or “blank” space across the United States.

15. At the appearance of the AT&T coverage map, production at the workshop halts, the lights go out, and the background music stops. Looking up at the map, the elf states, “Naughty,” and places the device in a blue package.

16. After production resumes, the elf with the checklist warns, “[g]ood luck browsing the web with that one.”

17. AT&T’s and Verizon’s “3G” coverage maps then appear and the announcer states, “with five times more ‘3G’ coverage than AT&T, Verizon Wireless is your destination for great gifts.”

### **“Christmas Blues”**

18. The “Christmas Blues” television advertisement starts with a man leaving a motel in the snow while Elvis Presley’s “Blue Christmas” plays in the background.

19. The man repeatedly shakes his wireless device and the blue AT&T coverage map appears above it. As in Verizon’s previous advertisements, the AT&T coverage map depicts large swaths of “white” or “blank” space across the United States.

20. The man is next shown in a nondescript train station and then in the back of a taxi, looking frustrated and shaking his wireless device. Depicting the wireless device as unable to work in a non-descript train station and taxi cab is false because AT&T likely has “3G” service in such an urban setting. Further, even if the train station and taxi cab were intended to depict a location where AT&T does not have any “3G” coverage, the wireless device would still work on AT&T’s “2.5G” GSM/EDGE network or “2.0G” GSM/GPRS network.

21. As the man returns home and embraces his son, the announcer asks, “Want ‘3G’ web browsing in more places? There’s a map for that,” as the camera pans to a red present with a red Verizon coverage map floating above it.

22. AT&T's and Verizon's coverage maps then appear and the announcer states, "with five times more '3G' coverage than AT&T, Verizon Wireless is your destination for great gifts."

**AT&T Is Being Harmed By These New Advertisements**

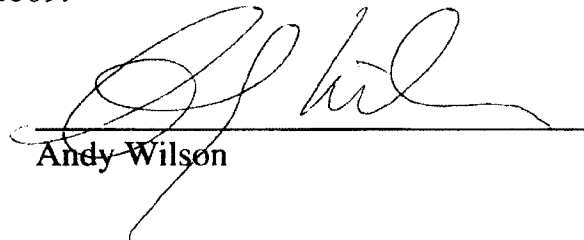
23. By depicting AT&T customers as unable to use their wireless devices and by indicating that the Apple iPhone will not function in areas where AT&T does not have "3G" coverage, Verizon three new television advertisements falsely communicate that AT&T's customers cannot use their wireless devices in areas where they are, in fact, able to do so.

24. If Verizon is allowed to run these false advertisements and use maps with large swaths of "white" or "blank" spaces in places where AT&T, in fact, does have coverage and its customers are able to communicate, the public's confidence in the coverage of AT&T's network and in AT&T's truthful representations to its customers about its network will be undermined.

25. The full damage that AT&T will suffer from repeated publication of these new advertisements is difficult if not impossible to calculate. No amount of corrective advertising would undo the damage.

I declare under penalty of perjury that the foregoing is true and correct.

This 12th day of November, 2009.



Andy Wilson



**PLACEHOLDER FOR EXHIBITS FILED MANUALLY**

**CERTIFICATE OF SERVICE**

This is to certify that on November 12, 2009, I electronically filed the foregoing **SUPPLEMENTAL DECLARATION OF ANDY WILSON** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

David L. Balser  
Nathan L. Garroway  
Tracy Klingler  
Harriet Jill Wasserman  
L. Joseph Loveland, Jr.

I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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/s/ David L. Balser

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*Attorney for AT&T Mobility LLC*